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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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09/097,383

06/16/1998

KARE CHRISTIANSEN

PM254781

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09/17/2008

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EXAMINER

SHAY, DAVID M

ART UNIT

PAPER NUMBER

3735

MAIL DATE

DELIVERY MODE

09/17/2008

PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

<p align="center"><b>Advisory Action</b> <b>Before the Filing of an Appeal Brief</b></p>	<p><b>Application No.</b> 09/097,383</p>	<p><b>Applicant(s)</b> CHRISTIANSEN ET AL.</p>	
	<p><b>Examiner</b> david shay</p>	<p><b>Art Unit</b> 3735</p>	

**--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --**

THE REPLY FILED June 11, 2008 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE.

1. ☒ The reply was filed after a final rejection, but prior to or on the same day as filing a Notice of Appeal. To avoid abandonment of this application, applicant must timely file one of the following replies: (1) an amendment, affidavit, or other evidence, which places the application in condition for allowance; (2) a Notice of Appeal (with appeal fee) in compliance with 37 CFR 41.31; or (3) a Request for Continued Examination (RCE) in compliance with 37 CFR 1.114. The reply must be filed within one of the following time periods:

- a) ☒ The period for reply expires 3 months from the mailing date of the final rejection.  
b) ☐ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection.

Examiner Note: If box 1 is checked, check either box (a) or (b). ONLY CHECK BOX (b) WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**NOTICE OF APPEAL**

2. ☐ The Notice of Appeal was filed on \_\_\_\_\_. A brief in compliance with 37 CFR 41.37 must be filed within two months of the date of filing the Notice of Appeal (37 CFR 41.37(a)), or any extension thereof (37 CFR 41.37(e)), to avoid dismissal of the appeal. Since a Notice of Appeal has been filed, any reply must be filed within the time period set forth in 37 CFR 41.37(a).

**AMENDMENTS**

3. ☐ The proposed amendment(s) filed after a final rejection, but prior to the date of filing a brief, will not be entered because  
(a) ☐ They raise new issues that would require further consideration and/or search (see NOTE below);  
(b) ☐ They raise the issue of new matter (see NOTE below);  
(c) ☐ They are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or  
(d) ☐ They present additional claims without canceling a corresponding number of finally rejected claims.

NOTE: \_\_\_\_\_. (See 37 CFR 1.116 and 41.33(a)).

4. ☐ The amendments are not in compliance with 37 CFR 1.121. See attached Notice of Non-Compliant Amendment (PTOL-324).  
5. ☐ Applicant's reply has overcome the following rejection(s): \_\_\_\_\_.  
6. ☐ Newly proposed or amended claim(s) \_\_\_\_\_ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).  
7. ☐ For purposes of appeal, the proposed amendment(s): a) ☐ will not be entered, or b) ☐ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.  
The status of the claim(s) is (or will be) as follows:  
Claim(s) allowed: \_\_\_\_\_.  
Claim(s) objected to: \_\_\_\_\_.  
Claim(s) rejected: \_\_\_\_\_.  
Claim(s) withdrawn from consideration: \_\_\_\_\_.

**AFFIDAVIT OR OTHER EVIDENCE**

8. ☐ The affidavit or other evidence filed after a final action, but before or on the date of filing a Notice of Appeal will not be entered because applicant failed to provide a showing of good and sufficient reasons why the affidavit or other evidence is necessary and was not earlier presented. See 37 CFR 1.116(e).  
9. ☐ The affidavit or other evidence filed after the date of filing a Notice of Appeal, but prior to the date of filing a brief, will not be entered because the affidavit or other evidence failed to overcome all rejections under appeal and/or appellant fails to provide a showing a good and sufficient reasons why it is necessary and was not earlier presented. See 37 CFR 41.33(d)(1).  
10. ☐ The affidavit or other evidence is entered. An explanation of the status of the claims after entry is below or attached.

**REQUEST FOR RECONSIDERATION/OTHER**

11. ☒ The request for reconsideration has been considered but does NOT place the application in condition for allowance because:  
See Continuation Sheet.  
12. ☐ Note the attached Information *Disclosure Statement*(s). (PTO/SB/08) Paper No(s). \_\_\_\_\_.  
13. ☐ Other: \_\_\_\_\_.

/david shay/  
Primary Examiner, Art Unit 3735

Continuation of 11. does NOT place the application in condition for allowance because: The request to withdraw the claim objection is noted, but is not convincing. The recitation of the structure included in the "means for defining a flow path for said water" is considered recitation of substantial structure material or acts for achieving the specified function, which is improper (see MPEP 2181(I)(C)). With regard to the art rejection applicant argues that the purpose of Eckhouse is to cause heating and that all the wavelengths employed in Eckhouse are employed for their heating ability, therefore "there is no particular logic" for filtering out wavelengths because they are heating wavelengths. While applicant's arguments are noted, However, in addition to the portions of the Eckhouse reference which are the focus of applicant's arguments, the reference contains other teachings as well. Specifically, Eckhouse states "wide band electromagnetic radiation source that covers the near UV and the visible portion of the spectrum would be desirable for treatment of external skin and vascular disorders" (see column 2, lines 35-38), which would lead one of ordinary skill in the art to provide a filter such as that of Berry which would filter out the longer non-visible wavelengths, further, with reference to the reflector design for the lamp of figure 1, Eckhouse specifies that the reflector have "a very high reflectivity in the visible, and the UV range of the spectrum" (see column 5, lines 40-41). Clearly, with respect to at least the embodiment of Figure 1, Eckhouse desires the treatment light wavelengths which do not include the infrared range, for example (again with regard to the embodiment of figure 1), Eckhouse discusses treatment with wavelengths in the bandwidth 500-650 nm, the output in this range is increased by using a phosphore which converts the UV light into radiation of this waveband See column 5, lines 56-63), but an additional means (such as a filter as taught by Berry) must be employed in order to remove the infrared wavelengths since these do not interact with the phosphore. Thus, while Eckhouse does contain teachings, as pointed out by applicant wherein it is desirable to employ the infrared wavelengths produced by the lamp, there is also taught applications wherein the infrared light is not desired, it is in conjunction with these that one of ordinary skill in the art would employ the filter of Berry. With regard to the combination including Gustafsson, applicant argues that if the examiner were asserting the propriety of this combination on the basis of the desirability of cooling the lamp of Eckhouse this would be improper and "contrary to the findings of the Board". However, the examiner notes that the lamp would be made much more effective, not solely because of the cooling, but also because this would constitute an alternate means of providing a wavelength shifting material into the path of the emitted light. This arrangement would provide a greater conversion efficiency of the light, as more light would escape the lamp envelope, due to the presence of water, which has a higher index of refraction than air, and on which is closer to that of glass which forms the envelope of Eckhouse. Thus the additional presence of the cooling effect, while in the examiner's view is also desirable, does not negate the other advantages which would motivate one of ordinary skill in the art to include this structure. Thus the rejections are proper and applicant's arguments are not convincing.